

**DONETTA J. BRIGGS**  
Claimant

**MCI WORLDCOM**  
Respondent

**ZURICH U S INSURANCE CO.**  
Insurance Carrier

The claimant notes the Board Order entered November 13, 2002, determined claimant provided timely notice of a work-related accident and that claimant suffered a work-related injury. But the Board denied benefits because claimant failed to establish her need for back surgery was due to her work-related injury. Claimant argues that she has now provided medical evidence to establish her need for surgery was caused by her work-related injury. Claimant further argues the evidence establishes she was required to stand and frequently bend at the waist which caused her back pain. Claimant concludes she has met her burden of proof to establish she suffered a work-related accident and is entitled to her requested medical and temporary total disability compensation benefits.

Respondent argues that claimant's request for benefits should be denied due to lack of substantial and credible medical evidence that claimant's work duties caused her need for surgery.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein and the parties' briefs, the Board makes the following findings of fact and conclusions of law:

This is the second Board review from a preliminary hearing order entered on this claim. On July 25, 2002, ALJ Jon L. Frobish entered an order that claimant had failed to sustain her burden of proof that she sustained a work-related injury arising out of and in the course of her employment with respondent. The claimant appealed that decision to the Board.

The Board determined the issues on appeal were whether claimant gave timely notice and whether she suffered accidental injury arising out of and in the course of her employment. It was held:

The Board finds that claimant gave Ms. Bufford timely notice of a work-related accident and that claimant sustained a work-related injury to her back. However, the record does not establish whether that injury was temporary or permanent. Furthermore, claimant has failed to prove that her subsequent need for back surgery was due to a back injury that arose out of and in the course of her employment with respondent. As claimant failed to establish a direct connection between her work that ended November 11, 2001 and her surgery in June of 2002, the Order of the Administrative Law Judge should be affirmed.<sup>1</sup>

Accordingly, the Board affirmed the ALJ's decision denying benefits although for different reasons.

A second preliminary hearing was held on February 6, 2003. The issues at the second preliminary hearing were addressed in the following colloquy:

THE COURT: This is docket number 1,003,978, Donetta Briggs is the claimant. MCI Worldcom is the respondent. This is a preliminary hearing. What is the issue this morning, gentlemen?

MR. RIEDMILLER: Well, Your Honor, we previously had a preliminary hearing on July 25, 2002. It was on a day that you were not available to hear the case so the case was temporarily reassigned to Judge Frobish. On that date Judge Frobish entered an order denying compensability and notice in this case. The case was

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<sup>1</sup> *Briggs v. MCI Worldcom*, No. 1,003,978, 2002 WL 31828621 (Kan. WCAB Nov. 13, 2002).

then appealed to the Worker Compensation Appeals Board. And in an order entered November 13, 2002, the board found that claimant did, in fact, give timely notice of a work-related accident and that claimant sustained a work-related injury to her back; however, the board found that the record does not establish whether that injury was temporary or permanent and whether or not the need for back surgery was due to a back injury that arose out of and in the course of employment with respondent. So they basically said, well, it looked like a temporary aggravation without causation for the subsequent surgery the claimant had on her own. We are here then subsequent to that award requesting the same benefits that we previously requested and have marked and offered into evidence Exhibits 1 through 6. Exhibits 2 and 3 of 1 through 6 are the causation opinions of Dr. Eyster and Dr. Murati stating that more probably than not the surgery and the back injury is related to this work-related injury.

THE COURT: Does respondent have any opening statement?

MR. ANDERSEN: Respondent continues to deny the compensability of the accident, Your Honor. We will put on evidence to that effect.

ALJ John D. Clark entered his decision on March 27, 2003. The ALJ noted:

On July 25, 2002, the Honorable [sic] Jon Frobish found the Claimant failed to sustain her burden of proof that she sustained a work-related injury. This decision was affirmed by the Workers Compensation Board.

This Court has no authority to reverse a decision issued by the Workers Compensation Board. All benefits are denied.

The ALJ never made any factual findings based upon the evidence presented and introduced at the preliminary hearing held on February 6, 2003. Instead, the ALJ concluded that he did not have the authority to enter a decision contrary to the Board's decision entered on appeal from the first preliminary order.

An ALJ is not limited in the number of preliminary hearings that may be held in a case. It is within the sound discretion and authority of the ALJ to determine the number of preliminary hearings to be held and whether a prior preliminary hearing Order should be modified based on the evidence presented. Furthermore, the ALJ has the jurisdiction and authority to amend, modify and/or clarify a preliminary order as the evidence may dictate or as circumstances may require.

A preliminary hearing is a summary proceeding and a decision based upon the evidence presented at such preliminary hearing, whether rendered by an ALJ or the Board upon appeal from a preliminary hearing, is not binding upon the parties but subject to a full

hearing on the claim.<sup>2</sup> Because new evidence may materially alter the basis for a prior preliminary decision, whether made by an ALJ or the Board, such decisions are subject to change. Consequently, the ALJ had the authority to determine the issues raised at the second preliminary hearing.

The Board's authority on review from preliminary hearings is limited to certain jurisdictional issues determined by the ALJ.<sup>3</sup> Because the ALJ concluded he did not have authority, there were no factual findings made by the ALJ on the issues raised by claimant and respondent. Therefore, in the absence of fact findings, this matter should be remanded to the ALJ for further findings and orders on those and any other remaining issues.

### **AWARD**

**WHEREFORE**, the Board reverses the March 27, 2003, preliminary hearing Order entered by Administrative Law Judge John D. Clark, and remands this case to Judge Clark for a determination of the remaining issues.

**IT IS SO ORDERED.**

Dated this 30th day of May 2003.

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BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant  
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Director, Division of Workers Compensation

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<sup>2</sup> K.S.A. 44-534a(a)(2).

<sup>3</sup> Id.